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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. ANTOWAN LADELL PARKER, Defendant and Appellant.	B299183 (Los Angeles County Super. Ct. No. VA143818)

APPEAL from a judgment of the Superior Court of Los Angeles County, John Torribio, Judge. Affirmed with directions.

Kathy R. Moreno, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, David E. Madeo, Acting Supervising Deputy Attorney General, and Peggy Z. Huang, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Antowan Ladell Parker (Parker) shot and killed Kenia Buckner, his ex-girlfriend and the mother of his three children. Parker killed Buckner in front of her mother, two of Buckner's children, and her niece. Neighbors heard the gunshots and saw Parker leave the scene. A jury convicted Parker of first degree murder, assault with a semiautomatic weapon, and possession of a firearm by a felon. Parker appeals, arguing that the prosecutor committed misconduct during closing argument and that the abstract of judgment contains several errors. We affirm and direct the trial court to correct the abstract of judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Parker and Buckner Have a Relationship Marred by Domestic Violence*

Parker and Buckner dated intermittently for years and had three children together: Antowan III, Kennedy, and Kori. Their relationship was turbulent. In January 2010 Parker broke into Buckner's apartment with a crowbar and hit her with his fists. In that incident, Buckner's mother, Debbie Buckner, was able to grab Parker and pull him away from Buckner. A sheriff's deputy living next door to Buckner heard a "blood-curdling" scream and went outside the building, where he saw Parker standing over Buckner with the crowbar in his hand.

On January 13, 2017 Buckner was driving to the bank with Parker to get money to give him for the children, when Parker pointed a black semiautomatic handgun at Buckner and told her to take him to her new boyfriend's house where he would shoot

her. Buckner refused and drove back to her apartment building, where Parker got out of the car.

B. *Parker Kills Buckner in Front of Her Family*

On January 16, 2017 Buckner was in her apartment with her mother, her niece, Alaysha, and Kori and Kennedy.[1] Sherita Adams was in the apartment having Buckner braid her hair. Buckner's aunt, Sherry Boyd, arrived after Adams.

At approximately 1:30 p.m. Kori, Kennedy, and Alaysha were on their way to the building's laundry room when they saw Parker sitting in a chair under the stairs. According to all three children, Parker put his fingers to his lips to tell them to keep quiet. Kori remembered Parker had a "backpack with him and metal," and Kennedy said Parker was touching something in his pocket. Parker told the children he was going to take them on a trip, possibly to Disneyland. Kori and Alaysha saw Parker go upstairs, and the three children went to the laundry room.

Buckner was braiding Sherita's hair when Parker entered the apartment. Buckner was startled. When she realized Parker had a gun, she became "very hysterical" and called for her mother, who was in the bathroom. Boyd came out of the kitchen, walked behind Parker, and said, "Just stop. Don't do this in front of the kids." Parker pushed Boyd away, pointed the gun at her, and told her to leave, which she did. Debbie Buckner came out of the bathroom and told Parker she wanted to talk to him, but Parker pointed the gun at her and told her to step back.

Hearing screaming and crying, the children ran upstairs from the laundry room. Kennedy and Alaysha looked through

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[1] At the time they testified at trial, Kori was six years old, and Kennedy and Alaysha were 11 years old.

the window of the apartment and saw Parker shoot Buckner. Debbie Buckner saw Parker shoot her daughter multiple times. Kennedy ran to get help from a neighbor, and then went inside to try and stop her mother from bleeding. Kori and Kennedy saw their father go downstairs and leave the building. One of the neighbors heard the gunshots and also saw Parker walk down the steps and leave. A building inspector conducting an inspection in a neighboring building also heard the shots and saw Parker walk down the stairs.

Parker's other child, Antowan III,[2] was with his paternal grandmother when he heard about the shooting. The grandmother drove with Antowan to a friend's house, and when they arrived Antowan saw his father in a black car. Antowan saw his father get out of the car and give a gun to the friend, who put the gun in a bag and placed it into a trash can. Parker gave Antowan a hug and told him that he was sorry, that he loved him, and that he needed time to think.

An investigation revealed that all five shell casings found at the scene were fired from the same semiautomatic firearm. The investigation also showed that Buckner suffered six gunshot wounds, including to the head, right shoulder, right abdomen and right armpit, all but one of which were fatal.

C. *The People Charge Parker with Multiple Crimes*

The People charged Parker with murder (Pen. Code, §187, subd. (a); count one),[3] two counts of assault with a semiautomatic

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[2] Antowan was 11 years old when he testified at trial.

[3] Statutory references are to the Penal Code.

firearm (§ 245, subd. (b); counts two and three),[4] and possession of a firearm by a felon (§ 29800, subd. (a)(1); count four). The People alleged in connection with the murder count Parker personally used a firearm within the meaning of section 12022.53, subdivision (b), personally and intentionally discharged a firearm within the meaning of section 12022.53, subdivision (c), and personally and intentionally discharged a firearm causing great bodily injury or death within the meaning of section 12022.53, subdivision (d). The People further alleged Parker had been convicted of a felony (residential burglary) that was a serious felony within the meaning of section 667, subdivision (a)(1), and a serious or violent felony within the meaning of the three strikes law (§§ 667, subds. (b)-(j), 1170.12). Parker pleaded not guilty and denied the allegations.

D. *The Prosecutor Gives His Closing Argument*

After the witnesses testified and the court instructed the jury, the prosecutor gave a closing argument that included references to the prior acts of domestic violence between Parker and Buckner. The prosecutor argued that this "evidence shows a number of things about the defendant. You know, bullied, selfish, coward, a number of things, and doesn't care what the consequences are. And I'm not just talking about a murder and a tragic loss of life, but, you know, this one even—you know, for

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[4] Count two was based on Parker's alleged assault of Debbie Buckner and count three was based on his alleged assault of Boyd. The trial court subsequently granted Parker's motion for judgment of acquittal on count three.

those of us who have been around a long time—hits you in the gut, you know, a murder of the mother of his children with his children right there in the vicinity. I mean he just doesn't care."

Speaking about Buckner's family, the prosecutor stated: "Debbie Buckner[ ] had to see the worst thing a parent can see, and that's their own child killed. And she's hysterical. She's screaming. 'He killed my baby. He killed my baby.' And you know from the standpoint of compelling testimony, it's hard to imagine anything more heartbreaking than seeing the defendant's own children having to take the stand and, I mean, were right down—Kori is six years old. And, you know, we're not doing this for dramatic effect or something. Kori—and she's the cutest little girl, but she saw her father lying in wait at the bottom of the stairs; offers her a trip to Disneyland, you know?"

The prosecutor also argued: "[T]hese kids had to get on a witness stand in front of their father and talk about their mother being killed. But the testimony of Kennedy . . . and Alaysha . . . was important testimony. And Kennedy in particular because she remembered a lot of it . . . . She goes up to the top of that landing, and from that window, she sees something that she will remember for the rest of her life. And I hope she can get over that. She sees her own father killing her mother."

E. *The Jury Convicts Parker, and the Trial Court Sentences Him*

The jury found Parker guilty of first degree murder, assault with a semiautomatic weapon, and possession of a firearm by a felon, and found true the allegation he personally and intentionally discharged a firearm causing death. After Parker

admitted the prior conviction allegations, the trial court sentenced Parker to an aggregate prison term of 92 years 8 months to life. Parker timely appealed.

DISCUSSION

Parker's appeal is based on the prosecutor's statements that Debbie Buckner "had to see the worst thing a mother could see," that it was "heartbreaking" to see Kori ("the cutest little girl") testify about her mother's murder, that Kennedy would "remember for the rest of her life" the scene of her father shooting her mother, and that this case hit him "in the gut." Parker argues these statements constituted prosecutorial misconduct because the prosecutor argued "the impact of the crime" on Buckner's mother and children, "appealed to the jurors' sympathy and prejudice," and "injected his own opinions and impressions as to the evidence." Parker, however, forfeited this argument, and in any event, any prosecutorial misconduct in making these statements was harmless beyond a reasonable doubt.

A. *Applicable Law and Standard of Review*

"'"'A prosecutor's misconduct violates the Fourteenth Amendment to the United States Constitution when it "infects the trial with such unfairness as to make the conviction a denial of due process." [Citations.] In other words, the misconduct must be "of sufficient significance to result in the denial of the defendant's right to a fair trial." [Citation.] A prosecutor's misconduct that does not render a trial fundamentally unfair nevertheless violates California law if it involves "the use of deceptive or reprehensible methods to attempt to persuade either

the court or the jury.""""" (*People v. Hoyt* (2020) 8 Cal.5th 892, 943; see *People v. Beck and Cruz* (2019) 8 Cal.5th 548, 657; *People v. Caro* (2019) 7 Cal.5th 463, 510.) "'When attacking the prosecutor's remarks to the jury, the defendant must show that, "[i]n the context of the whole argument and the instructions" [citation], there was "a reasonable likelihood the jury understood or applied the complained-of comments in an improper or erroneous manner."'" (*People v. Medellin* (2020) 45 Cal.App.5th 519, 533; see *People v. Centeno* (2014) 60 Cal.4th 659, 667; *People v. Meneses* (2019) 41 Cal.App.5th 63, 74.)

B. *Parker Forfeited His Argument the Prosecutor Committed Misconduct During Closing Argument*

"To preserve a claim of prosecutorial misconduct on appeal, "'a criminal defendant must make a timely and specific objection and ask the trial court to admonish the jury to disregard the impropriety.'" (*People v. Fayed* (2020) 9 Cal.5th 147, 204; see *People v. Beck and Cruz*, *supra*, 8 Cal.5th at p. 657 [""'As a general rule a defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion—and on the same ground—the defendant made an assignment of misconduct and requested that the jury be admonished to disregard the impropriety.'"].) """[O]therwise, the point is reviewable only if an admonition would not have cured the harm caused by the misconduct."'" (*People v. Hoyt*, *supra*, 8 Cal.5th at p. 952.)

Parker admits that he did not object to any of the prosecutor's statements he now contends were improper and that he did not request an instruction. Parker does not argue that an objection would have been futile or that a curative admonition would have failed to remediate any harm caused by the

prosecutor's statements. (See *People v. Ghobrial* (2018) 5 Cal.5th 250, 290; *People v. Peoples* (2016) 62 Cal.4th 718, 797; *People v. Linton* (2013) 56 Cal.4th 1146, 1205.) Therefore, he has forfeited his prosecutorial misconduct argument. (See *People v. Flores* (2020) 9 Cal.5th 371, 403 [defendant forfeited prosecutorial misconduct argument where he "acknowledge[d] his failure to object to the prosecutor's remark" and "offer[ed] no persuasive reason to excuse this forfeiture"].)

Parker argues he did not have to object to the prosecutor's statements or request an admonition because the trial court had the obligation to prevent the claimed prosecutorial misconduct and the prosecutor had a duty not to commit misconduct by appealing to jurors' sympathies or sharing his personal opinions. That is not the law. As the Supreme Court stated in rejecting this argument, "'we do not expect the trial court to recognize and correct all possible or arguable misconduct on its own motion [citations], [and] defendant bears the responsibility to seek an admonition if he believes the prosecutor has overstepped the bounds of proper comment, argument, or inquiry.'" (*People v. Gray* (2005) 37 Cal.4th 168, 215; accord, *People v. Wilson* (2008) 44 Cal.4th 758, 800.)

Parker also asks this court to exercise its discretion to consider the merits of his forfeited prosecutorial misconduct argument because it raises a pure question of law. Such an exercise of discretion is not appropriate here. As the Supreme Court stated in rejecting this argument: "Defendant . . . fails to identify any authority indicating that forfeiture concerns are irrelevant because his claims concern '"a pure question of law which is presented by undisputed facts."' [Citation.] Defendant's interpretation of that exception to the forfeiture rule would seem

to imply that any issue reviewable de novo may be raised for the first time on appeal . . . . Such an exception would allow a defendant to invalidate an entire trial based on a claim of prosecutorial misconduct that could have been easily remedied by a timely objection and an admonition. We decline to extend the exception to the circumstances presented here, or to excuse the forfeiture as a matter of discretion." (*People v. Potts* (2019) 6 Cal.5th 1012, 1035-1036; see *People v. Earp* (1999) 20 Cal.4th 826, 858-859 ["because any harm could have been cured by an admonition, defendant's failure to make a timely objection and ask the court to admonish the jury precludes him from now challenging as misconduct many of the questions and comments by the prosecutor that he cites as part of an asserted pattern of misconduct"]; *People v. Williams* (1998) 17 Cal.4th 148, 161, fn. 6 [whether an appellate court should reach a "question that has not been preserved for review by a party" is "entrusted to its discretion"].)

C. *Any Prosecutorial Misconduct Was Harmless*

This case involved a brutal murder witnessed by the victim's mother and young children. The prosecutor may have said a few things in closing argument that he might not have said in a less emotional trial and that might have been improper. But even if the prosecutor's statements crossed the line, they were harmless.

"Even where a defendant shows prosecutorial misconduct occurred, reversal is not required unless the defendant can show he suffered prejudice. [Citation.] Error with respect to prosecutorial misconduct is evaluated under *Chapman v. California* (1967) 386 U.S. 18 . . . to the extent federal

constitutional rights are implicated and *People v. Watson* (1956) 46 Cal.2d 818 . . . if only state law issues were involved." (*People v. Fernandez* (2013) 216 Cal.App.4th 540, 564; see *People v. Gionis* (1995) 9 Cal.4th 1196, 1228; *People v. Adanandus* (2007) 157 Cal.App.4th 496, 514.) Under *Chapman*, prosecutorial misconduct that violates federal law is not prejudicial if the misconduct was harmless beyond a reasonable doubt. (*People v. Katzenberger* (2009) 178 Cal.App.4th 1260, 1268-1269; *People v. Champion* (2005) 134 Cal.App.4th 1440, 1453.) Under *Watson*, prosecutorial misconduct that violates state law is not prejudicial "'unless it is reasonably probable that a result more favorable to the defendant would have been reached without the misconduct.'" (*People v. Flores*, *supra*, 9 Cal.5th at p. 403; accord, *People v. Wallace* (2008) 44 Cal.4th 1032, 1071; see *People v. Barnett* (1998) 17 Cal.4th 1044, 1133 [prosecutorial misconduct is harmless "if it is not reasonably probable that a result more favorable to the defendant would have been reached in its absence"].)

Here, even if Parker had not forfeited the argument, and even if the prosecutor's comments were improper, any misconduct was harmless beyond a reasonable doubt under the more rigorous *Chapman* standard. The prosecutor's comments about Buckner's mother and children witnessing the murder, the effect of the murder on the children, and the prosecutor's "gut" were brief and isolated, and the evidence of Parker's guilt was overwhelming. Multiple witnesses saw Parker shoot and kill Buckner before walking away. Parker apologized to his son after the murder and disposed of the weapon in his son's presence. And the court instructed the jury that the attorneys' statements were not evidence and that the jury must "not be influenced by sentiment, conjecture, sympathy, passion, prejudice, public opinion or public

feeling." Even under *Chapman*, any improper comments by the prosecutor during closing argument were harmless. (See *People v. Young* (2019) 7 Cal.5th 905, 933 [any prosecutorial misconduct was harmless because there was "no reasonable probability that the prosecutor's fleeting remark had any effect on the jury, particularly given the overwhelming evidence of defendant's guilt"]; *People v. Seumanu* (2015) 61 Cal.4th 1293, 1345 [prosecutor's misconduct was harmless where "the evidence of guilt was strong" and the trial court instructed the jury "it 'must not be influenced by sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling'"].)

D. *The Abstract of Judgment Must Be Corrected*

Parker argues the abstract of judgment must be corrected because it states he was convicted on count two of assault with a deadly weapon, in violation of section 245, subdivision (a), rather than assault with a semiautomatic firearm, in violation of section 245, subdivision (b). The People concede this point. We agree and direct the trial court to make that correction. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Amaya* (2015) 239 Cal.App.4th 379, 385.)

Parker also argues that section one of the abstract of judgment improperly states count two and count four are serious and violent felonies. The People acknowledge that the boxes in section one indicating both felonies are serious and violent are marked, but they assert the boxes are properly marked because a different part of the abstract, section four, states that Parker was sentenced to prison for a "current or prior serious or violent felony." Parker has the better argument. The People alleged that count two was a "serious felony" (which Parker concedes),

but they did not allege count four was a serious or a violent felony. Assault with a semiautomatic firearm is a serious felony under section 1192.7, subdivision (c)(31), but possession of a firearm by a felon is not a serious or violent felony. (*People v. White* (2016) 243 Cal.App.4th 1354, 1364; *People v. Brimmer* (2014) 230 Cal.App.4th 782, 792.) Therefore, we direct the trial court to correct this portion of the abstract of judgment as well.

Finally, Parker contends the abstract of judgment erroneously states the trial court sentenced him to consecutive sentences because of a "current or prior serious or violent felony." This part of the abstract, however, is correct; the court did sentence Parker to consecutive terms on counts two and four. (See § 1170.12, subd. (a)(7); *People v. Gangl* (2019) 42 Cal.App.5th 58, 69; *People v. Buchanan* (2019) 39 Cal.App.5th 385, 392 *People v. Torres* (2018) 23 Cal.App.5th 185, 201.)

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to state that Parker was convicted on count two of assault with a semiautomatic firearm, in violation of section 245, subdivision (b), rather than assault with a deadly weapon, in violation of section 245, subdivision (a), and that Parker's conviction on count two is not a violent felony and his conviction on count four is not a serious or violent felony. The trial court is also directed to prepare a corrected abstract of judgment and forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.